

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: DAVOL, INC./C.R. BARD,
INC., POLYPROPYLENE HERNIA
MESH PRODUCTS LIABILITY
LITIGATION

Case No. 2:18-md-2846

CHIEF JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kimberly A. Jolson

This document relates to:
ALL ACTIONS.

CASE MANAGEMENT ORDER NO. 9

Governing Initial Pleadings

I. SCOPE OF ORDER

This Order shall govern all actions in the above-captioned MDL proceeding (“this MDL”) to the extent set forth herein that are directly filed in this MDL after the date of this Order or otherwise expressly identified herein.

This Order relates to Plaintiffs’ filing and service of a Master Complaint, future filings of Short Form Adoption By Reference Complaints, Defendants Davol, Inc. and C.R. Bard, Inc.’s responsive pleading obligations, including Short Form Adoption By Reference Answers, and Rule 26 Initial Disclosures.

II. MASTER PLEADINGS

A. **Master Complaint:** Within 14 days of entry of this Order, the Plaintiffs’ Steering Committee shall file and serve a Master Complaint. The Master Complaint shall identify all products that are part of this MDL.

B. **Short Form Adoption By Reference Complaint:** Attached as Exhibit A, is a sample Short Form Adoption By Reference Complaint (“Short Form Complaint”) for use in this

MDL. Plaintiffs shall file and serve a Short Form Complaint in the form attached hereto in every action that is directly filed in this MDL following entry of this Order. For each action in this MDL, subject to this Order, the Master Complaint together with the Short Form Complaint shall be deemed the operative complaint.

C. **Master Answer:** Subject to Section VII below (regarding motions to dismiss and for judgment on the pleadings), within 30 days after being served with the Master Complaint via the ECF system, Defendants named in the Master Complaint shall file via the ECF system a Master Answer which shall include all affirmative defenses to the Master Complaint.

D. **Short Form Adoption By Reference Answer:** Each Defendant named in a Short Form Complaint will respond with a Short Form Adoption By Reference Answer (“Short Form Answer”). A sample Short Form Answer is attached as Exhibit B. The Short Form Answer may either adopt and incorporate the responses and defenses set forth in Defendants’ Master Answer or assert new ones. The Short Form Answer shall serve as a general denial of all claims asserted in the Short Form Complaint or admit some and shall incorporate by reference defenses asserted in the Master Answer (or otherwise assert the defenses to that action). For each action subject to this Order, the Master Answer, together with the Short Form Answer, shall be deemed the operative answer. For any Plaintiff who utilizes a Short Form Complaint and identifies “Other Count(s)” as set forth in Section 11 of the Short Form Complaint, by filing a Short Form Answer, Defendants will be deemed to have denied any and all asserted “Other Count(s)” and reserve all rights to assert any and all defenses to any and all “Other Count(s)” that are pled in accordance with Section II.E, below, and Section VII, below. For any Long Form Complaints that are filed in other jurisdictions and conditionally transferred to this Court via Conditional Transfer Order (“CTO”), Defendants shall be permitted to interpose a Short Form Answer.

E. A subsequent Case Management Order will address the filing and service of Defendants' responsive pleading obligations and interposing more robust and detailed Answers for cases that are selected into the Bellwether Process. The same Case Management Order shall address the potential filing of amended complaint(s) for cases selected into the Bellwether Process.

F. **Service Under Rule 4:** Defendants have agreed that they will waive formal service of process for cases directly filed in or to be transferred to this MDL. By waiving service of process and accepting complaints by email, Defendants are not waiving any affirmative defenses, but Defendants shall not challenge the adequacy of service if made pursuant to this Section below.

To effectuate service, Plaintiffs shall send an ECF-conformed or stamped copy of the filed complaint/short form complaint to FederalBardService@ReedSmith.com. By sending an e-mail to this address containing the ECF-conformed or stamped copy of the complaint, this will constitute good, valid and official service for these actions under FED. R. CIV. P. 4. Actions shall be considered served on the date and time of the transmittal of the e-mail containing the aforementioned items.

G. **Electronic Filing:** All Short Form Complaints must be filed electronically, absent extraordinary circumstances. Prior to any plaintiff's attorney filing a Short Form Complaint directly in this MDL, that attorney must register for, and obtain, a Southern District of Ohio login name and password. All attorneys must familiarize themselves with the Southern District of Ohio's Electronic Filing Policies and Procedures Manual published on February 22, 2013, found at:

<http://www.ohsd.uscourts.gov/sites/ohsd/files/Electronic%20Filing%20Policies%20and%20Procedures.%202013.0222.pdf>, as well as the Guide to Filing a Civil Complaint that can be found at <http://www.ohsd.uscourts.gov/sites/ohsd/files/attorney%20new%20case%20filing%20guide.pdf>.

H. **Filing Fees:** Internet credit card payments shall be required for all complaints and made online through Pay.gov. Plaintiffs' counsel will be prompted to pay the required filing fee. Information regarding filing fees can be found in the Electronic Case Filing Procedures Guide, at <http://www.ohsd.uscourts.gov/sites/ohsd/files/Policies%20and%20Procedures%20Manual%20Final%2001042016a.pdf>.

I. **Duties of Individual Plaintiffs' Counsel:** It is the duty of the counsel representing the individual plaintiffs proceeding hereunder to ensure that the Short Form Complaint(s) for his or her plaintiffs are completed properly, including any additional counts pled thereto. Nothing in this Case Management Order changes the respective roles and duties of the Plaintiffs' Steering Committee and the counsel for the individual plaintiffs as detailed in Paragraph 7 of CMO 3.

III. **APPLICATION TO ACTIONS ALREADY FILED IN, OR TRANSFERRED TO, THIS MDL**

A. For any action filed in, or transferred to, this MDL before entry of this Order:

- i. Defendant(s) shall Answer the operative complaint with a Short Form Answer within forty-five (45) days of entry of this Order or after being properly served with the Complaint in accordance with Section II.F., above, whichever is longer.

IV. **NO LEXECON WAIVER**

Consistent with CMO 2, nothing in this Order constitutes a waiver under *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), by any party. However, nothing in this Order shall preclude the parties from agreeing to such waivers in the future. The issue of such waivers will be the subject of a future Case Management Order to address Bellwether Cases.\

V. TRANSFER TO FEDERAL DISTRICT COURT OF PROPER VENUE

Section F of Case Management Order No. 1 filed in this MDL [ECF No. 11] will apply to when and how cases should be transferred to the federal district court in the district of proper venue.

VI. CHOICE OF LAW

As set forth CMO 2, Section G, filing directly in this MDL—a Short Form Complaint—pursuant to this Order will not determine the applicable choice of law, including the choice of law for any of the claims in the action and for statute of limitations purposes. The fact that an action was filed directly in this MDL pursuant to this Order will have no impact on choice of law. Choice of law issues are reserved and shall be briefed, as appropriate, at a later date.

VII. MOTIONS TO DISMISS/JUDGMENT ON THE PLEADINGS

Defendants reserve all rights to move to dismiss or for judgment on the pleadings under Federal Rules of Civil Procedure 9 and 12.

VIII. RULE 26 INITIAL DISCLOSURES

The requirements of FED. R. CIV. P. 26(a)(1)(A) shall hereby be waived for all parties going forward. However, in an effort to advance the litigation, Defendants Davol, Inc. and C.R. Bard, Inc. each agree to provide a Master Initial Disclosure on or before December 7, 2018 2018. Service of these disclosures shall be made on the PSC's co-lead counsel.

IT IS SO ORDERED.

11-20-2018
DATE

11/20/2018
DATE



EDMUND A. SARGUS, JR.
CHIEF UNITED STATES DISTRICT JUDGE



KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: DAVOL, INC./C.R. BARD, INC.,
POLYPROPYLENE HERNIA MESH
PRODUCTS LIABILITY LITIGATION**

Case No. 2:18-md-2846

**CHIEF JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kimberly A. Jolson**

**This document relates to:
PLAINTIFF NAME.**

Civil Action No. _____

SHORT FORM COMPLAINT

Plaintiff(s) file(s) this Short Form Complaint pursuant to Case Management Order No. _____ and is/are to be bound by the rights, protections, and privileges and obligations of that Order. Plaintiff(s) hereby incorporate(s) the Master Complaint in MDL No. 2846 by reference. Plaintiff(s) further show(s) the Court as follows:

1. The name of the person implanted with Defendants' Hernia Mesh Device(s):

2. The name of any Consortium Plaintiff (if applicable):

3. Other Plaintiff(s) and Capacity (i.e., administrator, executor, guardian, conservator):

4. State of Residence:

5. District Court and Division in which action would have been filed absent direct filing:

6. Defendants (Check Defendants against whom Complaint is made):

- ☐ A. Davol, Inc.
- ☐ B. C.R. Bard, Inc.
- ☐ C. Other (please list: _____)

7. Identify which of Defendants' Hernia Mesh Device(s) was/were implanted (Check device(s) implanted):

- ☐ 3DMax Mesh
- ☐ 3DMax Light Mesh
- ☐ Bard (Marlex) Mesh Dart
- ☐ Bard Mesh
- ☐ Bard *Soft* Mesh
- ☐ Composix
- ☐ Composix E/X
- ☐ Composix Kugel Hernia Patch
- ☐ Composix L/P
- ☐ Kugel Hernia Patch
- ☐ Marlex
- ☐ Modified Kugel Hernia Patch
- ☐ Perfix Light Plug
- ☐ PerFix Plug
- ☐ Sepramesh IP
- ☐ Sperma-Tex
- ☐ Ventralex Hernia Patch
- ☐ Ventralex ST Patch

- ☐ Ventralight ST
- ☐ Ventrío Patch
- ☐ Ventrío ST
- ☐ Visilex
- ☐ Other (please list in space provided below):

8. Defendants' Hernia Mesh Device(s) about which Plaintiff is making a claim (Check applicable device(s)):

- ☐ 3DMax Mesh
- ☐ 3DMax Light Mesh
- ☐ Bard (Marlex) Mesh Dart
- ☐ Bard Mesh
- ☐ Bard *Soft* Mesh
- ☐ Composix
- ☐ Composix E/X
- ☐ Composix Kugel Hernia Patch
- ☐ Composix L/P
- ☐ Kugel Hernia Patch
- ☐ Marlex
- ☐ Modified Kugel Hernia Patch
- ☐ Perfix Light Plug
- ☐ PerFix Plug

- ☐ Sepramesh IP
- ☐ Sperma-Tex
- ☐ Ventralex Hernia Patch
- ☐ Ventralex ST Patch
- ☐ Ventralight ST
- ☐ Ventrion Patch
- ☐ Ventrion ST
- ☐ Visilex
- ☐ Other (please list in space provided below):

9. Date of Implantation and state of implantation: _____

10. As of the date of filing this Short Form Complaint, has the person implanted with Defendants' Hernia Mesh Device(s) had subsequent surgical intervention due to the Hernia Mesh Device(s)? Yes _____ No _____

11. Basis of Jurisdiction:

- ☐ Diversity of Citizenship
- ☐ Other: _____

12. Counts in the Master Complaint adopted by Plaintiff(s):

- ☐ Count I – Strict Product Liability- Defective Design
- ☐ Count II – Strict Product Liability- Failure to Warn
- ☐ Count III – Strict Product Liability- Manufacturing Defect
- ☐ Count IV– Negligence

- ☐ Count V– Negligence Per Se
- ☐ Count VI– Gross Negligence
- ☐ Count VII – State Consumer Protection Laws (Please identify applicable State Consumer Protection law(s)):

- ☐ Count VIII – Breach of Implied Warranty
- ☐ Count IX – Breach of Express Warranty
- ☐ Count X – Negligent Infliction of Emotional Distress
- ☐ Count XI – Intentional Infliction of Emotional Distress
- ☐ Count XII – Negligent Misrepresentation
- ☐ Count XIII – Fraud and Fraudulent Misrepresentation
- ☐ Count XIV – Fraudulent Concealment
- ☐ Count XV – Wrongful Death
- ☐ Count XVI – Loss of Consortium
- ☐ Count XVII – Punitive Damages
- ☐ Other Count(s) (please identify and state factual and legal bases for other claims not included in the Master Complaint below):

- ☐ Jury Trial is Demanded as to All Counts
- ☐ Jury Trial is NOT Demanded as to All Counts; if Jury Trial is Demanded as to Any Count(s), identify which ones (list below):

s/

Attorney(s) for Plaintiff

Address, phone number, email address and bar information:

[Insert Fax Number]
[Insert E-mail]